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Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour, 1 January 2004-30 June 2005

Report of the Secretary-General

Summary

The present report is submitted in response to a request of the General Assembly in paragraph 16 of its resolution 59/287 of 13 April 2005 to inform Member States on an annual basis of all actions taken in cases of established misconduct and/or criminal behaviour and the disciplinary action and, where appropriate, legal action, taken in accordance with the established procedures and regulations. The present report covers the period from 1 January 2004 to 30 June 2005.

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I. Introduction

1. The present report is submitted in response to a request of the General Assembly in paragraph 16 of its resolution 59/287 to inform Member States on an annual basis on all actions taken in cases of established misconduct and/or criminal behaviour and the disciplinary action, and where appropriate, legal action, taken in accordance with the established procedures and regulations. The present report covers the period from 1 January 2004 to 30 June 2005.

2. As requested in paragraph 17 of resolution 59/287, an information circular is being issued so that all staff of the Organization will be informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including any legal action, with due regard to the protection of the privacy of the staff members concerned.

3. A broad overview of the administrative machinery in disciplinary matters is provided in section II below so that the summary of the Secretary-General's practice in disciplinary cases provided in section III can be understood in context. Section IV of the report contains information on cases reported to national authorities for possible criminal prosecution.

II. Overview of administrative machinery in disciplinary matters

A. Rules governing the conduct of staff members[1]

4. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and *integrity*" (emphasis added).

5. Article I of the Staff Regulations (ST/SGB/2005/5) and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values. Particular reference is made to staff regulation 1.2 and staff rule 101.2 for specific instances of expected or prohibited conduct.

B. Misconduct

6. Article X of the Staff Regulations, entitled "Disciplinary measures", provides in regulation 10.2 that "the Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory". Staff rule 110.1, on misconduct, provides that "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an

[1] For a full overview of relevant provisions, see Secretary-General's bulletin ST/SGB/2002/13, entitled "Status, basic rights and duties of United Nations staff members", issued at the request of the General Assembly. Provisions relating to the status, rights and obligations of staff members and to disciplinary matters can also be found in the electronic Human Resources Handbook under "Status, basic rights and duties" and "Disciplinary".

international civil servant, may amount to unsatisfactory conduct ... leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct". Similarly, staff rule 101.2 (a) provides that "disciplinary procedures ... may be instituted against a staff member who fails to comply with his or her obligations and the standards of conduct set out in the Charter of the United Nations, the Staff Regulations and Rules, the Financial Regulations and Rules, and all administrative issuances". Within those parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures. Administrative instruction ST/AI/371, on revised disciplinary measures and procedures,[2] provides further examples of conduct for which disciplinary measures may be imposed.

C. Due process

7. Where the head of office or responsible officer believes, on the basis of an investigation, that disciplinary procedures may be warranted, he or she will refer the matter to the Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case.[3] During the period covered by the report, preliminary investigations were undertaken by the head of office or his or her designees, by the Office of Internal Oversight Services, at its own initiative, or at the request of the head of office. The adoption of General Assembly resolution 59/287 has given greater responsibility to the Office of Internal Oversight Services in this regard.

8. If the Assistant Secretary-General for Human Resources Management decides to pursue the matter, the first step is to notify the staff member in writing of the allegations as well as of his or her right to seek the assistance of counsel. The staff member is given a reasonable opportunity to respond to the allegations. In the light of the comments provided by the staff member, it is decided whether to close the case, to refer it to a Joint Disciplinary Committee for advice or to summarily dismiss the staff member.

9. While the Secretary-General has broad discretionary authority in deciding upon an appropriate measure in each case, no staff member can be subjected to disciplinary measures until the matter has been referred to a Joint Disciplinary Committee for advice as to what measures, if any, are appropriate. Such referral to a Joint Disciplinary Committee may be waived when the staff member concerned and the Secretary-General agree on a disciplinary measure and the proceedings would therefore serve no valid purpose. Prior referral to a Joint Disciplinary Committee is not required when the seriousness of the case warrants summary dismissal. Staff

[2] Also relevant is administrative instruction ST/AI/379, on procedures for dealing with sexual harassment.

[3] The head of administration in a mission will refer the case to the Department of Peacekeeping Operations, Personnel Management and Support Service, at Headquarters, which will refer the matter to the Office of Human Resources Management if it concurs with the mission.

members who have been summarily dismissed may, at their initiative, seek a review of their case by a Joint Disciplinary Committee. All staff members subjected to disciplinary measures ultimately have recourse to the United Nations Administrative Tribunal.[4]

D. Disciplinary measures

10. Staff rule 110.3 provides that disciplinary measures can take one or more of the following forms (i.e., more than one measure can be imposed in each case):

(a) Written censure by the Secretary-General;

(b) Loss of one or more steps in grade;

(c) Deferment, for a specified period, of eligibility for within-grade increment;

(d) Suspension without pay;

(e) Fine;

(f) Demotion;

(g) Separation from service, with or without notice or compensation in lieu thereof;

(h) Summary dismissal.

11. In determining the appropriate measure, each case is decided on its own merit, taking into account the particulars of the case, including aggravating and extenuating circumstances.

E. Other measures

12. Reprimands, written or oral, by a supervisory official are not considered disciplinary measures. Like warnings or letters of caution, they are managerial measures. However, they are also important measures for upholding standards of proper conduct and promoting accountability. When inappropriate behaviour affects performance, the issue is addressed in the context of performance management. This may include training, counselling, withholding of salary increments, non-renewal of contract or termination of appointment.

III. Summary of practice in disciplinary cases for the period from 1 January 2004 to 30 June 2005

13. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below indicating the nature of the misconduct and the disciplinary measures imposed by the Secretary-General. The function or other particulars of the staff member are provided only when they played a role as

[4] Numerous judgements of the United Nations Administrative Tribunal relate to disciplinary measures and show the practice of the Secretary-General for those cases brought before the Tribunal. Digests of those cases can be found in the online Case and Jurisprudence Digest (http://webfarmext.un.org/hrmtribunal).

aggravating circumstances in determining the measures to be taken. Conduct issues that were dealt with by means other than disciplinary measures are not listed here.

14. Not every case brought to the attention of the Secretary-General results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is not sufficient evidence to pursue a matter as a disciplinary case or when a staff member provides a satisfactory explanation in response to allegations the case is closed and the staff member is considered cleared of the allegations. Cases may also be closed when a staff member retires or is otherwise separated from the Organization before disciplinary proceedings are concluded, as the Secretary-General does not have the authority to impose disciplinary measures on former staff members. In such cases, a record is made and placed in the official status file.

A. Theft and misappropriation

15. A staff member took without permission a United Nations vehicle for private use and had a minor accident with another vehicle owned by a local resident. He failed to stop, did not report the accident and then initially failed to cooperate with the investigation after the resident had reported the accident to United Nations Security. *Disposition*: written censure; three-year deferral for within-grade salary increment; one month suspension without pay.

B. Fraud and misrepresentation

16. A staff member misrepresented his employment history to the Organization and forged a bank document, which he submitted to the Organization as authentic. In addition, the staff member failed to take all necessary steps to discharge his outstanding arrears and honour an order of a competent court. *Disposition*: summary dismissal.

17. A staff member forged two invoices and falsely certified a special education grant claim in an attempt to receive monies to which she was not entitled. *Disposition*: summary dismissal.

18. A staff member submitted a fraudulent medical insurance claim. The staff member altered the invoice, fraudulently inflating the amount actually charged for medical services. *Disposition*: separation from service.

19. A staff member sent two anonymous faxes to high-level officials, making accusations and using highly insulting language of a potentially libellous nature. The staff member then misrepresented to investigators the date on which he had reported the loss of his credit card that he had used to pay for sending one of the faxes. *Disposition*: written censure and demotion by one level.

20. A staff member failed to take measures to prevent his dependants from abusing the staff member's medical insurance plan, thereby allowing his dependant to submit a fraudulent prescription to a pharmacy in an attempt to obtain medication for a family member who was not covered by the staff member's plan. *Disposition*: written censure, loss of one step in grade and deferment for one year of eligibility for within-grade increment.

21. A staff member altered an official document in order to receive overtime payment for hours which she had not worked. *Disposition*: separation from service.

22. A staff member improperly altered an official bid from an outside vendor seeking to do business with the United Nations. *Disposition*: separation from service.

23. Over a period of five years, a staff member submitted fraudulent education grant claims and related documentation, thereby receiving monies from the Organization to which he was not entitled. *Disposition*: summary dismissal.

24. A staff member did not honour his private legal obligations and violated the local criminal law by improperly using funds entrusted to him by a colleague for personal purposes and risky investments. He failed to report his conviction by a local criminal court and engaged in an outside occupation without the approval of the Secretary-General. *Disposition*: summary dismissal.

C. Assault

25. During a heated verbal exchange among colleagues over the use of office space, a staff member physically assaulted another. *Disposition*: written censure; loss of a step in grade; and deferment of one year in eligibility for within-grade increment.

26. When asked to present his grounds pass by a security officer, a staff member was uncooperative, thereby violating his duty to comply with directions that may be issued by security officers in the performance of their functions, and then engaged in a physical confrontation with the security officer. *Disposition*: demotion after waiver of referral to the Joint Disciplinary Committee.

27. When a staff member did not comply with a security officer's request to present his grounds pass, the security officer engaged in a heated argument and a physical confrontation with him, resulting in injury to the staff member that required a hospital stay. *Disposition*: demotion after waiver of referral to the Joint Disciplinary Committee.

D. Sexual exploitation and sexual abuse

28. A staff member raped and engaged in sexual exploitation and abuse of two women, one of whom was a minor, and frequented a locale that had been declared off-limits by the mission. *Disposition*: summary dismissal.

29. A staff member was found to have engaged regularly in sex with local prostitutes and to have engaged in sex with a minor. He was also found to have accepted gifts and favours from members of the host-country community in return for their employment and provision of services to the United Nations. *Disposition*: summary dismissal.

30. A staff member condoned frequent acts of prostitution that occurred in a bar that he financed and managed. He also improperly used the property, assets and personnel of the United Nations to service the bar. The staff member also failed to cooperate with the investigation into his case. *Disposition*: summary dismissal.

31. A staff member raped a minor. *Disposition*: summary dismissal.

32. A staff member engaged in sexual exploitation and sexual abuse of minors and then attempted to bribe the police and a victim's guardian in an effort to subvert the investigation. *Disposition*: summary dismissal.

33. A staff member was convicted by a court in the host country for sexually abusing a minor entrusted to the staff member's care and making threats of a violent nature. He was sentenced to 12 months' imprisonment. Such conduct also constituted a violation of Staff Rules and Regulations. *Disposition*: summary dismissal.

E. Other

34. A staff member, driving a United Nations vehicle, was involved in an automobile accident that resulted in injuries both to himself and to a national of the host country, as well as damage to both vehicles. The staff member admitted to having consumed a number of alcoholic beverages earlier that evening. *Disposition*: written censure after waiver of referral to a Joint Disciplinary Committee.

35. A staff member disclosed confidential information to a number of persons without express authority to do so and allowed non-authorized persons to make wide-ranging inquiries regarding a confidential matter. *Disposition*: fine in the amount of one month's salary.

36. A staff member who had significant responsibilities for administrative matters was found to have taken inadequate action and had not followed through in the performance of duties, which contributed to injuries incurred by other staff. *Disposition*: written censure.

37. A staff member improperly influenced the procurement process for the award of a United Nations contract. *Disposition*: summary dismissal.

38. A staff member used CD-ROMs to introduce potentially damaging "hacker" software into the United Nations network. *Disposition*: separation from service.

IV. Criminal behaviour

Referral to national authorities of cases involving possible criminal conduct

39. When an investigation shows that criminal activity may have occurred, whether on the part of staff members or other United Nations-related personnel over whom the Secretary-General does not have disciplinary authority, the Secretary-General may decide to refer those cases to relevant national authorities for action. Data provided by the Office of Internal Oversight Services indicates that, during the period from 1 January 2004 to 30 June 2005, the Secretary-General referred 32 cases to national authorities, including 17 cases against identified individuals and 15 cases in which criminal behaviour was identified but the responsible individuals were not.